WP(C) 5004/2007

BEFORE

HON'BLE MR. JUSTICE HRISHIKESH ROY

Heard Mr. M. Bhuyan, learned counsel for the petitioner and also heard Ms. H.M.Phukan, learned Govt Advocate and Mr. M.U. Mahmud, learned Standing counsel for the State Election Comission,

The petitioner is aggrieved by the Notification dated 11.9.07 issued by the Deputy Commissioner, Morigaon in so far as declaration of Borbhogia Gaon Panchayat seat at serial No. 63 to be reserved for the category belonging to Schedule Tribes, Women.

Mr. Bhuyan, appearing for the petitioner submits that in the year 2001 also Borbhogia seat at Serial No. 63 of the Notification dated 23.11.01(Annexure-2) issued by the Deputy Commissioner, Morigaon was declared as reserved for Women category. Referring to the aforesaid notification dated 23.11.01. Learned counsel submits that the said reservation once again for Women candidate should not have been made for the same G.P. seat and this has affected the rights of General Category Candidates to contest the election.

Learned counsel has referred to the provisions of Section 9(4) of the Assam Panchayat Act,1994 which prescribes for reservation of Offices of the Chairperson of the Gaon Panchayat.

The manner of reservation of Chairperson's seat of a Gaon Panchayat are provided under the Provisions of Rule 6 of the Assam Panchayat (Constitution) Rules,1995, hereinafter referred to as the Rules. Under the provisions of the sub rule 4 (a) of Rule 6, it is provided that reservation of the seat shall be made by rotation among the Gaon Panchayats having regard to the SC/ST population in the descending order of such population.

Under Sub-Rule 4(b) of Rule 6 of the Rules, it is provided that at least 33 percent seats shall be reserved for 3 categories namely Women, SC and ST.

In sub-Rule 4 ' of the Rule 6, it is provided further that reserved seats for Women are to be decided on rotation basis.

Learned counsel for the petitioner submits that Borbhogia Gaon Panchayat has Schedule Tribe Population numbering 1672 as per 2001 Census. Amongst the total 85 Gaon Panchayats of Morigaon District. Borbhogia Gaon Panchayat in terms of the Schedule Tribe Population appears at serial 22 in descending order considering the number of Schedule Tribe persons residing in the said Gaon Panchayat area.

Since the reservation for SC and ST and Women category is only to the extent of 33 percent of the total Gaon Panchayats in the District of Morigaon, out of the total 85 seats, 12 seats should be kept proportionately reserved for Schedule Tribes Category Candidates.

It is submitted that there are 21 Gaon Panchayat having larger Schedule Tribe Population than Borbhogia Gaon Panhayat and if the mandate of the Statute are to be followed and reservation of the seats are to be made in descending strength of Schedule Tribes Population on rotation basis, Borbhogia Gaon Panchayat seats should not have been earmarked for Schedule Tribes candidates for the 2007 elections.

It is further submitted that in the year 2001 Election also the said Borbhogia Gaon Panchayat seat was earmarked for Woman Category candidate and if rotation method is to be followed this seat could not have been again earmarked in the year 2007 for Women Category Candidate.

To illustrate the faulty procedure adopted for declaring the Gaon Panchayat seats as reserved, attention is drawn to Charaibahi Gaon Panchayat at serial No. 64 of the notification dated 11.9.07 where the said Gaon Panchayat has been declared as unreserved seat. In the earlier notification dated 29.11.01 also the Charaibahi Gaon Panchayat at serial No. 64 was declared as unreserved Gaon Panchayat. Therefore it is contended that in respect of certain Gaon Panchayats, the rotation has not at all been followed.

Ms. H.M. Phukan has referred to the counter affidavit filed by the SDO

, Sadar, Morigaon. The minutes of the meeting held on 6.9.07 for determining the reservation of seats is enclosed at Annexure-1 in the said counter affidavit. It is revealed from the said minute that determination for seats to be kept reserved for Women were decided by drawing of lots. It thus appears that the procedure prescribed by the Rule 6 (4) were not followed in declaring Borbhogia Gaon Panchayat seat reserved for women belonging to ST category Candidates.

Having regard to the provisions, drawing of lots should have been made only amongst those Gaon Panchayats which were not earlier reserved for Women or ST/SC categories and whose turn has come this time, taking note of the descending figure of the reserve category Population residing in the Constituency. But the above procedure prescribed by the rules were obviously not followed while declaring Borbhogia Constituency as a reserved category seat, for the election which is scheduled to be held on 4.1.2008.

Mr. M.U. Mahmud, learned Govt. Advocate for the State Election Commission submits that election in Gaon Panchayats in Morigaon District are to be notified in the second phase and the Scheduled date of notification is 4.12.07.

Having considered the submission and after examining the legal provisions, I am of the view that the submissions of the learned counsel for the petitioner is based on strong legal foundation. But considering the fact that election are to be shortly held, direct intervention of this Court with the impugned action may not be justified. Therefore this court considers it appropriate to direct the Respondent authorities to examine the grievances in respect of Borbhogia Gaon Panchayat which has been notified as reserved Gaon Panchayat seat for women of ST Category.

The appropriate authority in Morigaon District would accordingly consider the grievances raised as is noticed above and make an endeavour to redress the grievances raised in respect of Borbhogia Gaon Panchayat and take an appropriate decision in the matter.

It is hoped that an expeditious decision preferably within 2(two) weeks from the receipt of the certified copy of this order will be taken. A copy of Court’s order may be made available by the petitioner before the appropriate authority.

With the aforesaid direction, this writ petition stands disposed of.